

TODD M. MALYNN (SBN 181595)  
tmalynn@polsinelli.com  
POL SINELLI LLP  
2049 Century Park East, Suite 2900  
Los Angeles, CA 90067  
Telephone: 310.556.1801  
Facsimile: 310.556.1802

Attorneys for Defendant  
PENGUIN MAGIC, INC.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

YIGAL MESIKA, an individual,  
  
Plaintiff,

vs.

PENGUIN MAGIC, INC., a Nevada  
corporation, DOES 1-10, inclusive,  
  
Defendant.

Case No. 2:15-cv-09314-RGK-DTB

**DECLARATION OF MARK  
DEMING IN SUPPORT OF  
PENGUIN MAGIC'S MOTION FOR  
SUMMARY JUDGMENT OR, IN  
THE ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT**

Judge: Hon. R. Gary Klausner

I, Mark Deming, declare as follows:

1. I am an attorney at the law firm of Polsinelli PC (Polsinelli LLP in California) and counsel for Defendant Penguin Magic, Inc. ("Penguin Magic") in this matter. I am licensed to practice law in Illinois.

2. I submit this Declaration in support of Penguin Magic's Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment.

3. A true and correct copy of Trademark Registration No. 3,782,721 is attached as Exhibit A.

4. A true and correct copy of Trademark Registration No. 3,978,477 is attached as Exhibit B.

5. A true and correct copy of cited excerpts of the non-confidential portion of the September 13, 2016 Deposition of Yigal Mesika is attached as Exhibit C.

6. A true and correct copy of the LOOPS Instructions that was obtained

1 from the United States Patent and Trademark Office prosecution history file for  
2 Trademark Application No. 77/978,815, which issued as Registration No.  
3 3,782,721, is attached as Exhibit D.

4 7. A true and correct copy of an image of Mesika's LOOPS Product that  
5 was obtained from the United States Patent and Trademark Office prosecution  
6 history file for Trademark Application No. 77/978,815, which issued as  
7 Registration No. 3,782,721, is attached as Exhibit E.

8 8. A true and correct copy of the publicly available website page  
9 containing the product description for Loops Vol. 1-2 by Yigal Mesika and Finn  
10 Jon 2 DVD's as posted to the [www.penguinmagic.com](http://www.penguinmagic.com) website and as produced by  
11 Penguin Magic in this litigation is attached as Exhibit F.

12 9. A true and correct copy of cited excerpts of Plaintiff Yigal Mesika's  
13 Responses to Defendant Penguin Magic, Inc.'s First Set of Requests for Admission  
14 is attached as Exhibit G.

15 10. A true and correct copy of the American Heritage Dictionary website  
16 entry for the word "loop" as produced by Penguin Magic in this litigation is  
17 attached as Exhibit H.

18 11. A true and correct copy of the Cambridge English Dictionary website,  
19 Collins Dictionary website, Dictionary.com website, and Oxford Dictionary  
20 (American English) website entries for the word "loop" as produced by Penguin  
21 Magic in this litigation is attached as Exhibit I.

22 12. A true and correct copy of posts and replies made on the web forums  
23 of the Theory11.com website as produced by Penguin Magic in this litigation is  
24 attached as Exhibit J.

25 13. A true and correct copy of posts and replies made on the web forums  
26 of the Ellusionist.com website as produced by Penguin Magic in this litigation is  
27 attached as Exhibit K.

28 14. A true and correct copy of posts and replies made on the web forums

1 of the The Magic Cafe.com website as produced by Penguin Magic in this  
2 litigation is attached as Exhibit L.

3 15. A true and correct copy of the 1998 Contract between Finn Jon's  
4 alleged representative Georges Proust and Yigal Mesika, which was produced for  
5 the first time in this litigation by Yigal Mesika on September 13, 2016 at his  
6 deposition, is attached as Exhibit M.

7 16. A true and correct copy of United States Patent No. 7,861,861 as  
8 produced by Penguin Magic in this litigation is attached as Exhibit N.

9 17. A true and correct copy of United States Patent No. 8,408,394 as  
10 produced by Penguin Magic in this litigation is attached as Exhibit O.

11 18. A true and correct copy of Wikipedia's Glossary of Magic (illusion)  
12 website page as produced by Penguin Magic in this litigation is attached as Exhibit  
13 P.

14 19. A true and correct copy of the search results returned for the term  
15 "loops" on the Penguin Magic website, as produced by Penguin Magic in this  
16 litigation, is attached as Exhibit Q.

17 20. A true and correct copy of the publicly available website page  
18 containing the product description for As Real As It Gets by Losander DVD +  
19 Gimmicks as posted to the www.penguinmagic.com website and as produced by  
20 Penguin Magic in this litigation is attached as Exhibit R.

21 21. A true and correct copy of the publicly available source code of the  
22 website page containing the product description for As Real As It Gets by  
23 Losander DVD + Gimmicks as posted to the www.penguinmagic.com website and  
24 as produced by Penguin Magic in this litigation is attached as Exhibit S.

25 22. A true and correct copy of the November 16, 2015 Declaration of  
26 Yigal Mesika, which was produced for the first time in this litigation by Yigal  
27 Mesika on September 8, 2016, is attached as Exhibit T.

28 23. A true and correct copy of excerpts of the United States Patent and

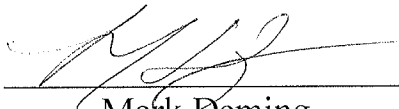
1 Trademark Office prosecution history file for Trademark Application No.  
2 77/458,554, which issued as Registration No. 3,978,477, that was produced by  
3 Yigal Mesika in this litigation, is attached as Exhibit U.

4 24. A true and correct copy of excerpts of the United States Patent and  
5 Trademark Office prosecution history file for Trademark Application No.  
6 77/978,815, which issued as Registration No. 3,782,721, that was produced by  
7 Yigal Mesika in this litigation, is attached as Exhibit V.

8 25. A true and correct copy of the cited portion of Plaintiff Yigal  
9 Mesika's Amended Initial Disclosures is attached as Exhibit W.

10 26. A true and correct copy of cited excerpts of Plaintiff Yigal Mesika's  
11 [Supplemental] Responses to Defendant Penguin Magic, Inc.'s First Set of  
12 Interrogatories is attached as Exhibit X.

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14 Dated: September 28, 2016

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